

AECM's comments on the proposal for a regulation laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument (CPR)
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Introductory Remarks

The European Association of Guarantee Institutions welcomes the Commission's proposal for a regulation laying down common provisions (CPR) on European Structural and Investment Funds (ESIF) for the programming period 2021–2027 and appreciates its ambitious commitment to create a policy for all regions – with no region left behind.

AECM considers that cohesion policy is a cornerstone of the EU's policies thus, the economic, social and territorial cohesion must continue to be at the core of the European Union Strategy and it needs to be ensured that necessary capacities are mobilized and focused on implementing the strategy.

Therefore, with the following comments AECM would like to contribute to the ongoing negotiations between the European Parliament, the Council of the European Union and the European Commission on the CPR.

Main positions

AECM appreciates in particular the following elements put forward in the aforementioned draft CPR:

- **The increased flexibility**

AECM welcomes the Commission's proposal on both, voluntary contributions directly to instruments managed at EU level, as mentioned in art. 10 of the draft CPR as well as the possibility of transfer of resources from any of the funds to any other fund under shared management or to any instrument under direct or indirect management as mentioned in art. 21 of the proposed CPR. It needs to be stressed that these options must be voluntary. If a Member State does not see any need to use these possibilities, no detriment whatsoever may arise.

Moreover, AECM fully agrees with the proposal regarding the combination of financial instruments with grants in a single operation as laid down in art. 47 and 52 of the suggested CPR. Such blending operations should be possible in the most practice-oriented way.

- **The new criteria for the allocation of funding**

AECM fully supports the new allocation method for the funding of the regions, i.e. that in addition to the criteria of GDP per capita, also factors such as unemployment (notably youth unemployment), low education level, climate change and integration of migrants are taken into account. These criteria reflect better regional disparities and ensure a fair treatment for all.

However, in our point of view, some adjustments should be envisaged to make ESIF management as simple and efficient as possible.

General proposals

1. AECM regrets to see that the budget of cohesion policy has been reduced by 10% in real terms given that cohesion is the area where the EU can demonstrate its relevance to and for its citizens. Therefore, AECM considers that ESIF should be allocated a budget at least similar to the pre-2020 period.

2. Furthermore, AECM is concerned about the Commission's proposal to uncouple rural development from cohesion policy, from the CPR and from thematic objectives that currently align all five European structural and investment funds. This concern is further enhanced by the Commission's current proposals (both on the MFF and on the CAP) for a significant reduction of rural development funds. To illustrate, the proposal for the 2021-2027 CAP allocations amounts to EUR 324 billion for agricultural policy measures. Nearly 80% of this amount is allocated to direct payments to farmers and agricultural market measures under the European Agricultural Guarantee Fund (EAGF), and only the remaining part supports rural development under EAFRD, namely EUR 70 billion. In our point of view, this would lead to severe cuts in the revenues of the beneficiaries in rural areas and it would concern most agricultural undertakings. Therefore, AECM kindly asks the decision-takers to find ways to reintegrate the European Agricultural Fund for Rural Development into the rulebook and ensure a complementarity between Structural funds and EAFRD.
3. Further, AECM calls on the decision-takers to reconsider the proposed EU co-financing rates. The reduced EU co-financing rates as provided in the current draft of the CPR impede the realization of projects. There is the risk that reduced co-financing rates would favor the implementation of only large projects. As such, AECM proposes to maintain the co-financing rates at the level of the current funding period, namely: 85% for less developed regions, 60% for transition regions and 50% for more developed regions.
4. Besides, AECM is of the opinion that compliance between ESIF rules and state aid rules should be laid down in the proposed CPR. Based on the experience gained during the current 2014-2020 period, the interaction between ESIF rules and state aid rules appears to be problematic. In order to facilitate compliance between these two sets of rules and to ensure a level playing field, AECM proposes to include a provision in the proposed CPR that would clarify the interaction between the two and allow for an easy and fluid combination ensuring legal certainty.

Proposals to simplify the management of financial instruments

1. The current provisions of the recital 44 regarding the selection of intermediaries appear extremely vague. For that reason, AECM proposes to include a provision in the art. 52 according to which managing authorities should have the possibility to select directly the most appropriate implementation option for financial instruments in order to address the specific needs of target regions.
2. Referring to the definition of 'leverage effect' mentioned in the art. 2§22 of the draft CPR, AECM suggests to define it as the 'amount of resources provided by and out of the programme to final recipients divided by the amount of the contribution from the funds'. In our point of view, this definition takes into account self-financing and private co-financing and provides a more accurate measure of funds mobilized in a project thanks to the leverage of ESIF.
3. AECM fully agrees that financial instruments shall provide support to final recipients only for investments expected to be financially viable and which do not find sufficient funding from market sources. Yet, for reasons of legal certainty, art. 52§2 of the draft

CPR should explicitly mention that financial instruments cannot be used to support refinancing activities, such as replacing existing loan agreements or other forms of financing for investments which have already been physically completed or fully implemented at the date of the investment decision. Moreover, AECM considers that the CPR is not precise enough regarding financial support possibilities to companies. Therefore, art. 52§2 of the draft CPR shall include a provision stipulating that where financial instruments support financing to enterprises, including SMEs, such support may include investment in both tangible and intangible assets as well as working capital, within the limits set by the applicable Union state aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. It must also include the costs of transfer of proprietary rights in enterprises.

4. Referring to the ex-ante assessment, AECM considers that the proposed art. 52§3 limits the flexibility that managing authorities need in order to define adequate financial instruments in view to tackle market failures. Thus, it should be made explicit that the final choice regarding financial instruments and investment strategy is up to the managing authority and not to a consultancy firm in charge of the ex-ante assessment. This is crucial to ensure compliance with the principle of subsidiarity and a sound management.

To this end, AECM requests that the ex-ante assessment shall include at least the following elements: an analysis of market failures, of sub-optimal investment situations, and of investment needs for policy areas and thematic objectives or investment priorities.

5. Regarding the refundable feature of financial instruments, their management ways must be flexible and proportionate. To this end, AECM proposes to make explicit in the texts what is expected from financial intermediaries to justify the use of funds i.e. verification of the eligibility of the recipient and its project before the funding. Ex-post processes of verification, audit and monitoring laid down in the regulation proposal provide an additional guarantee regarding the sound use of funds. Thus, AECM proposes to include in the art. 53§8 a specification according to which evidence of the financial instruments use is limited to the ex-ante verification of the eligibility of the recipient and its project by the financial intermediary in light of conditions of the financial instrument.
6. As far as economic sustainability of operations is concerned, we call for exempting non-fraudulent bankruptcy from the reimbursement demand, as currently envisaged in the art. 59§1 of the draft CPR.
7. Concerning the specific eligibility rules for financial instruments, the European Commission proposes in the art. 62§3 to establish management fees at the fixed rate of 5%, with no regard to the financial instrument category. In our point of view, this stipulation induces a risk of non-sustainability of existing instruments and insecurity in the management of new instruments. Moreover, stopping the current instruments would have a negative effect on the development and the economic impact of ESIF. In addition, the reduction to 5% induces a crowding out effect of the smallest intermediaries. To this end, a provision should be included stipulating for guarantees

that the aggregate amount of management costs and fees over the eligibility period laid down in the Regulation (EU) No 1303/2013 shall not exceed the following limits:

- a. for a financial instrument providing guarantees, 10 % of the total amount of programme contributions paid to the financial instrument;
 - b. for a financial instrument providing guarantee fee subsidies, 6 % of the total amount of programme contributions paid to the financial instrument.
8. AECM considers that the Commission's proposal to make systematic controls at the level of banks in the context of guarantee funds as mentioned in the art. 75 is disproportionate and may be counter-productive. We are of the opinion that it is necessary to undertake controls at the level of the body that implements financial instruments. Therefore, AECM proposes for the ongoing discussions to include a provision that would stipulate that in the context of guarantee funds, the bodies responsible for the audit of programmes may conduct verifications or audits of the bodies providing new underlying loans only when one or more of the following situations occur:
- a. supporting documents, providing evidence of the support from the financial instrument to final recipients, are not available at the level of the managing authority or at the level of the bodies that implement financial instruments;
 - b. there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided.
9. Besides, the Commission proposal for the 2021-2027 programming period lacks legal certainty regarding the payment of subsequent payments. AECM considers that financial intermediaries should not under any circumstances need to lend treasury for ESIF, as the art. 86 of the draft CPR may imply, since it would question the attractiveness of financial instruments for managing authorities. Therefore, AECM strongly suggests to keep the conditions referring to payment to financial intermediaries as laid down by the current CPR which ensures the sound management of funds by financial intermediaries.
10. Concerning the availability of documents, AECM fully agrees with the proposal laid down in the art. 76 which stipulates that it should be envisaged that the managing authority shall ensure that all supporting documents related to an operation supported by the funds are kept at the appropriate level for a five-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made. Yet, it needs to be added that for the guarantee instrument the decisive moment is the settlement of default.
11. Regarding the transmission of data to the European Commission mentioned in the art. 37 of the draft CPR AECM considers that the Commission's proposal to transmit data every two months would increase significantly the management load for the financial instruments. In the case of financial instruments, a yearly reporting suits better the rhythm of investments. Accordingly, it should be stipulated that the managing authorities shall transmit cumulative data for each programme electronically to the European Commission by 30 November of each year.

12. As far as interest and other gains generated by support from the funds to financial instruments are concerned, AECM considers that art. 54 should also envisage that financial charges implied by the accounts management are eligible costs for a contribution from the funds, because in case of negative rates, as currently the case, accounts management induces financial costs for financial intermediaries. Moreover, with the payment rules to financial intermediaries laid down in the current CPR, the available treasury for some instruments, such as loans for innovation for example, is too low to be remunerated regarding quick disbursements of such loans.
13. Besides, repayable advances are still not defined in the CPR. Since repayable advances are used in several Member States to support innovation projects in starting phase, AECM kindly suggests to include a provision defining 'repayable advances' as a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project.
14. Regarding visibility, AECM sees room for improvement to better communicate the positive effects of the cohesion policy to the EU citizens.

We cordially ask the decision-takers to consider our views, as outlined in this position paper during the ongoing legislative procedure. It goes without saying that AECM is happy to contribute further to this intense work and provide the European institutions with additional information that may be required.

About AECM's members:

The 48 members of the European Association of Guarantee Institutions (AECM) are operating in 28 countries in Europe. They are either private sector guarantee schemes or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. AECM's members operate with counter-guarantees from regional, national and European level. At the end of 2017 AECM's members had over EUR 126 billion of guarantee volume in portfolio, thereby granting guarantees to more than EUR 3 million SMEs. AECM's members are by far the most important counterparts of the EIF concerning EU counter-guarantees, handling EU guarantees from the very beginning in 1998.

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